



September 18, 2001

Via Electronic Filing

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition For Waiver in CC Docket No. 96-98

Dear Ms. Salas:

The Competitive Telecommunications Association ("CompTel") hereby comments on the petition filed by CompTel member ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") on August 17, 2001 in the above-referenced proceeding. In this petition, ITC^DeltaCom has asked the Commission to waive the safe harbor requirements established for the UNE combination known as the enhanced extended link ("EEL") in the *Supplemental Order Clarification* (FCC 00-183) released on June 2, 2000 in this proceeding. CompTel strongly supports ITC^DeltaCom's petition.

ITC^DeltaCom seeks to obtain DS1 EELs from the customer's premises to ITC^DeltaCom's point of presence with channelized facilities usage of the entrance facility (but not the interoffice transport link). Further, while ITC^DeltaCom would be justified in seeking UNE rates for the entire DS1 EEL, it has indicated a willingness to pay tariffed Special Access rates for the entire entrance facility, thereby avoiding ratcheting, as a condition of the waiver. This DS1 EEL configuration does not involve the use of any collocation facilities. ITC^DeltaCom states that it has over 3,000 of these configurations in place today, and that it satisfies the Commission's local usage test for each one. ITC^DeltaCom's waiver request is narrowly tailored and, if granted, would promote the public interest by fostering greater local competition.

Initially, CompTel would note that ITC^DeltaCom's petition can be granted by clarifying, rather than waiving, the safe harbor requirements in the *Supplemental Order Clarification*. The unfortunate reality is that the Commission wrote the *Supplemental*

Order Clarification to enable competitive local exchange carriers (“CLECs”) to use EELs to provide local services to subscribers – which is precisely what ITC^DeltaCom desires to do – but the ILECs have distorted a few words in the *Supplemental Order Clarification* as a pretext for refusing to provide EELs to CLECs. In particular, the ILECs note that the FCC in Paragraph 22 prohibited CLECs from having loop-transport combinations “connected to” a tariffed service, and they broadly construe that language as a generic prohibition on the “commingling” of UNE and non-UNE traffic in any way over the same underlying facility. That misinterpretation effectively eliminates all EELs, with the result that, contrary to the Commission’s intentions, CLECs have been denied EELs by the ILECs in violation of the statute and the Commission’s orders for a lengthy period of time.

In fact, the language in the *Supplemental Order Clarification* does not prohibit the DS1 EEL configuration that ITC^DeltaCom needs in order to compete in the local market. ITC^DeltaCom would not in any way be “connecting” the EEL to a tariffed ILEC service. Rather, the DS1 EEL would run straight from the customer’s premises through to ITC^DeltaCom’s point of presence. The language of the Commission’s order repudiates the ILECs’ interpretation of the so-called anti-commingling provision. The Commission expressly contemplated in Paragraph 22 that CLECs would multiplex DS1 traffic onto a DS3 entrance facility, yet the ILECs have effectively prevented any such multiplexing through their overbroad interpretation of the “connected to” language. Further, the Commission eliminated the collocation requirement from the third safe harbor, which shows that the Commission expected CLECs to engage in channelized facility usage, as ITC^DeltaCom proposes here. Hence, the Commission can grant the relief sought by ITC^DeltaCom through a clarification of the *Supplemental Order Clarification*.

In the alternative, the Commission should waive the safe harbor requirements as requested by ITC^DeltaCom. The waiver request, as noted above, is very narrowly tailored and ITC^DeltaCom has shown “special circumstances” to justify the waiver. Based on its knowledge of member companies, CompTel can confirm that the particular configuration identified by ITC^DeltaCom is suitable primarily to enable CLECs without significant collocation arrangements to serve smaller cities and towns. CLECs that rely upon collocation arrangements to serve customers, or that desire to serve larger urban areas, would not necessarily or even likely receive similar benefits from an identical waiver.

Moreover, there is a critical need for the waiver, as ITC^DeltaCom has identified more than 3000 customers who would qualify for an EEL if the waiver is granted. Further, ITC^DeltaCom has noted that its exit and entry decisions are significantly influenced by its ability to obtain the requested EELs. If the waiver is granted,

Ms. Magalie Roman Salas
September 18, 2001
Page 3

ITC^DeltaCom can remain a strong competitor in many smaller cities and towns – many of which do not have any other facilities-based CLECs at present – and enable the company to sustain entry into other small markets for the first time. Particularly given the difficulty that many CLECs have experienced in recent months in obtaining the capital funding necessary to survive in the local market, the Commission should proactively pursue opportunities, such as the one presented by the instant waiver request, to take actions which will affirmatively and quickly help to promote local competition in historically under-served areas.

Lastly, CompTel would reiterate its well-established position that all use restrictions on EELs are patently unlawful under the Communications Act. While the Commission should grant ITC^DeltaCom's waiver request expeditiously, CompTel does not believe that the Commission should tarry any longer in completing its still-unfinished task of adopting permanent rules governing EELs and other UNE combinations. The industry is entitled to – and desperately needs – certainty now on the critical issue of when and under what conditions CLECs can use EELs to provide telecommunications services to subscribers. The Commission's failure to resolve this issue in a timely manner, and its insupportable failure for well over a year to enforce the *Supplemental Order Clarification* against recalcitrant ILECs, has caused significant damage to local competition at the worst possible time. The Commission needs to stop fiddling while Rome burns; it should resolve these issues expeditiously so that consumers may finally begin to receive benefits from the Telecommunications Act of 1996.

Please address all inquiries to the undersigned attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Lee". The signature is fluid and cursive, with the first name being the most prominent.

Jonathan Lee
Vice President,
Regulatory Affairs

cc (via electronic mail): D. Attwood
 J. Carlisle
 M. Carey
 J. Veach
 J. Miller